

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

09/16/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2002-000131

FILED: \_\_\_\_\_

STATE OF ARIZONA

ROY E HORTON

v.

DAVE F SECONDO

PAUL A RAMOS

FINANCIAL SERVICES-CCC  
MESA CITY COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

MESA CITY COURT

Cit. No. #762173

Charge: DUI

DOB: 12/15/63

DOC: 08/12/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since the time of oral argument on August 19, 2002. This Court has considered and reviewed the record of the proceedings from the Mesa City Court, the arguments and the Memoranda submitted by counsel. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice.

Appellant, Dave F. Secondo, was charged within the City of Mesa with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(1); Driving with a Blood Alcohol Content of .10 or Greater, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(2); Improper Right Turn, a civil traffic matter in violation of A.R.S. Section 28-751.1; and Failure to Drive in One Lane, also a civil traffic matter, in violation of A.R.S. Section 28-729.1. Appellant was later charged with Extreme DUI, a class 1 misdemeanor in violation of A.R.S. Section 28-1382(A). Appellant filed a Motion to Dismiss alleging that he was denied his constitutional right to counsel shortly after his arrest and prior to taking a blood test. The trial judge held an evidentiary hearing on Appellant's Motion to Dismiss on December 13, 2001. In a detailed and well reasoned minute entry, dated January 9, 2002, the trial court denied Appellant's Motion to Dismiss finding no violation of Appellant's right to counsel. Thereafter, on February 5, 2002, the parties waived their rights to a jury trial and submitted the case to the trial court on the basis of a stipulated record. On February 25, 2002, Appellant was found guilty of Extreme DUI. Appellant was sentenced on February 25, 2002 to serve 30 days jail, 20 days were suspended, pay a fine of \$478.00, pay a \$250.00 DUI Abatement Fund Fee, pay incarceration costs of \$453.00, attend and complete an alcohol screening, education and treatment program. Appellant has filed a timely Notice of Appeal only as to the DUI charge [A.R.S. Section 28-1381(A)(1)].

The law in Arizona is clear that a DUI suspect has a "limited right to a reasonable opportunity to consult with an attorney" by telephone prior to participating in any breath,

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blood or urine test.<sup>1</sup> This right must not interfere with the State's need to timely collect evidence of intoxication.

The trial judge made specific findings of fact:

In this case, the court finds credible the officer's testimony that he afforded the Defendant approximately 20 minutes to contact and confer with counsel, a presumptively reasonable period of time. Although Mr. Secondo was still conferring with counsel when the officer interrupted to request that Mr. Secondo decide whether to submit to the blood test, the officer had no way of knowing the content of the confidential conversation that had transpired between Mr. Secondo and his counsel or the precise time that Mr. Secondo had actually been able to achieve contact (with counsel). Nor, could the officer be expected to guess that additional time would have been crucial to defense counsel's ability to provide short-term advice to his client. Of course, depending upon the circumstances of any given case, the denial of a request by a suspect for additional time to confer can result in the violation of the suspect's right to counsel. In this case, because the time offered Defendant was presumptively reasonable under the circumstances, the police officer's failure to afford the Defendant additional time to confer with counsel, absent a request to do so, does not warrant dismissal or suppression.

Mr. Secondo also contends that the officer's earlier entry into the phone room interfered with his right to privately confer with counsel. The officer did enter the room

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<sup>1</sup> Kunzler v. Superior Court, 154 Ariz. 568, 744 P.2d 669 (1987).

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to investigate "banging noises" that he believed may have been coming from inside the room. However, the interruption of the Defendant's privacy was both brief and reasonable, and did not significantly impair his right to confer privately with counsel.

For the foregoing reasons, the Defendant's Motion to Dismiss is DENIED.<sup>2</sup>

This Court finds no error by the trial court in denying Appellant's Motion to Dismiss. The record supports the trial judge's legal conclusions that no denial of Appellant's right to counsel occurred.

IT IS THEREFORE ORDERED affirming the judgment of guilt and sentence imposed.

IT IS FURTHER ORDERED remanding this matter back to the Mesa City Court for all further and future proceedings in this case.

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<sup>2</sup> Minute entry of July 9, 2002, at pages 2-3.  
Docket Code 513